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Counsel for Petitioner

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID QUESADA,

Petitioner,

v.

ARTHUR KNOWLES, Acting Warden,

Respondent.

Case No. 08-2869 JF

**PETITIONER'S OPPOSITION
TO RESPONDENT'S REQUEST TO
STAY PROCEEDINGS**

To THE HONORABLE JEREMY FOGEL, United States District Court Judge:

Based upon the following grounds and authorities, counsel for Petitioner David Quesada respectfully OPPOSES Respondent's request for a stay of the proceedings.

1. Respondent's request for a stay is based solely on the hope that the Ninth Circuit's en banc review of *Hayward v. Marshall* will extend beyond the merits of Hayward's constitutional claims to hold that federal courts have no jurisdiction over state prisoners' federal constitutional claims challenging parole decisions, or that the some evidence standard of review is inapplicable. Respondent proffers no basis for such speculation, which cannot be a ground for requesting or granting a stay, especially in this case where the balance of interests rests entirely in Petitioner's favor.

1 2. Petitioner's claims are supported by ample state and federal authorities other
2 than *Hayward* and in any event do not depend on the outcome of the Ninth Circuit's
3 review of *Hayward*. The federally protected liberty interest at stake, the some evidence
4 standard of review, and the authorities supporting Mr. Quesada's constitutional claims
5 have been well established, pre- and post-*Hayward*. Please see authorities cited in the
6 Petition (Ninth Circuit cases: *Sass, Irons, Biggs, McQuillion*; State cases: *Rosenkrantz,*
7 *Dannenberg, Lee, Elkins*; see also *In re Viray*, 161 Cal.App.4th 1405 (2008); *In re*
8 *Singler*, 161 Cal.App.4th 281 (2008); *In re Burdan*, 161 Cal.App.4th 14 (2008)).

9 3. In all of the *hundreds* of cases in which Respondent has contested the liberty
10 interest and some evidence issues, the Ninth Circuit and district courts have squarely
11 rejected those claims.

12 4. The interests of the parties are not "balanced." A final mandate in *Hayward*
13 may take a year which would substantially extend Mr. Quesada's unconstitutional
14 confinement. Not only will he be irreparably harmed by a stay, but Respondent has
15 failed to suggest how the State could possibly be harmed by the lack of a stay,
16 particularly when considering the indisputable facts that Mr. Quesada has been
17 repeatedly determined forensically to pose a negligible public safety risk.

18 5. Respondent's focus on judicial resources is somewhat disingenuous.
19 Respondent, keenly aware of the ongoing proceedings in *Hayward*, and the nature of
20 said proceedings and the issues to be resolved, has obsessively sought to stay even
21 tangentially related proceedings, whether the underlying case will turn on *Hayward* or
22 not, typically waiting until the answer is due to make the request.

23 On the foregoing grounds, Petitioner respectfully OPPOSES Respondent's
24 motion for a stay of these proceedings.

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26 Dated: July 31, 2008
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1 Respectfully submitted,

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5 Marc Grossman
6 Counsel for Petitioner
7 DAVID QUESADA
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DECLARATION OF SERVICE BY FAX & MAIL

Case: **Quesada v. Knowles, No. USDC-ND 08-2869 JF**

I declare that I am a citizen of the United States. I am over the age of 18 and am not a party to the within titled cause.

On July 31, 2008, I served the attached

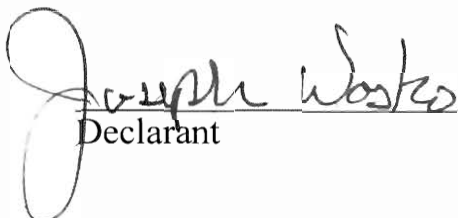
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on the parties listed below by enclosing same in an envelope to which adequate postage was affixed, and depositing same at the United States Post Office in Walnut, California for mailing.

Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, California 94102

I declare, under penalty of perjury, that the facts I have stated above are true and correct.

Dated July 31, 2008, at Walnut, California


Declarant